
In the
**United States Circuit Court
of Appeals**
For the Ninth Circuit

No. 4840

WONG FOOK JUNG,

Appellant

vs.

LUTHER WEEDIN, as Commissioner of Immigration at
the Port of Seattle, Washington,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION

Brief of Appellant

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STATEMENT OF THE CASE

This is an appeal from an order denying the petition for a writ of habeas corpus. Appellant applied for admission to the United States, basing his right to admission on the ground that he is a citizen of the United States of Chinese descent, having been

born in Portland, Oregon. He was denied admission by the immigration officials for the reason that in their opinion he had not established his birth in this country. The appellant, in addition to himself, presented several witnesses who proved his citizenship. The Government produced no witnesses, and depends entirely on certain alleged contradictions to discredit appellant's case. The appellant, Wong Fook Jung, was born on December 11, 1886, at 311 Alder Street, Portland, Oregon. His father, Wong Gar Yick, was a merchant in Portland at that time. The record in this case proves these facts, and therefore appellant is entitled to be admitted to the United States as a citizen thereof.

ARGUMENT

The question for this court to decide is a matter of fact and not of law. In submitting this case appellant is not unmindful of the fact that under ordinary circumstances the courts have no jurisdiction to review the decision of the Secretary of Labor on a disputed state of facts, and that the courts in such a case have no authority to weigh the evidence for or against appellant. However, it is here contended that the evidence in this case proves American nativity without any question, and that there is no evidence

in the record to the contrary, and therefore the decision of the immigration officials "is based upon suspicion and conjecture and not upon any evidence," and therefore subject to review by the courts.

The courts will assume jurisdiction where "the finding was not supported by the evidence."

Ng Tung Ho vs. Hoyt, 187 U. S. 94; 47 L. Ed. 90.

259 U. S. 492;

239 U. S. 3.

"Orders for deportation of Chinese laborers made on the sole ground that they have failed to show that they were bona fide merchants within the Chinese Exclusion Act of May 5, 1892, at the time registration was required, will be reversed by the Federal Supreme Court where that court is satisfied from an examination of the record that the testimony did establish that fact."

Tom Hong vs. U. S., 193 U. S. 517.

The record in this case shows that Wong Gar Yick, the father of Wong Fook Jung, the appellant, was residing at 311 Alder Street, Portland, Oregon, on December 11, 1886, at which time and place the appellant was born; that Wong Tee Doy, a brother of appellant's father, resided at the same place in Portland at that time; that each of said brothers was married and lived with his family at said 311 Alder

Street, Portland, Orgeon; that Wong Gar Yick's family consisted of his wife and two small boys, one being the appellant; that Wong Gar Yick left the United States for China in the year 1888, taking with him his family and the wife and children of his brother, Wong Tee Doy; that Wong Gar Yick, the father of appellant returned to the United States in the year 1902, where he subsequently died.

The record further shows that Wong Tee Doy subsequently returned to China and when he came back to the United States he also was denied admission by the immigration authorities who, as in the instant case, did not believe that he furnished sufficient proof of his birth in the United States, but he was landed by Judge Bellinger of the District Court at Portland, Oregon, upon his application for a writ of habeas corpus. The record further shows that when Wong Tee Doy's son, Wong Wah, applied for admission at the Port of Seattle on the ground that he was born in Portland, he too was denied admission by the immigration authorities for the reason that they did not believe, as in the instant case, that the applicant had proved his American nativity. Accordingly, he applied for a writ of habeas corpus, which was granted by Judge Hanford on May 14, 1900, and Wong Wah was landed as an American citizen. Bear in mind that Wong Tee Doy, denied

admission by the immigration authorities, and landed by the District Court in Portland, is a brother of appellant's father, and that Wong Wah, denied admission by the immigration authorities, and subsequently landed by the District Court in Seattle, is a cousin of the appellant, all of whom resided at the same store in Portland, Oregon, in the early eighties.

Now, the appellant, Wong Fook Jung, applies for admission at the Port of Seattle, and as was the case with his uncle and cousin, he is rejected by the immigration officials, which makes it apparent that the immigration service does not believe that any of this family are citizens and consistently rejects each one as he applies for admission. It is here maintained that the appellant is just as much entitled to be admitted to the United States upon his proof as Wong Tee Doy, his uncle, was entitled to be admitted by Judge Bellinger, and as Wong Wah, his cousin, was entitled to be admitted by Judge Hanford.

The following witnesses testified as to the American citizenship of the appellant: Wong Tee Doy, uncle; Hom Ngook, aunt; Wong Wah, cousin; Jong You, Chinese acquaintance, and William P. Swope, resident of Portland. The Government presented no witnesses.

Wong Tee Doy: This witness testified that the appellant was born on December 11, 1886, at 311

Alder Street, Portland, appellant's father being Wong Gar Yick, a brother of this witness; that in 1888 his brother, the father of appellant, went to China in company with his family, including appellant and witness's wife and children. The witness stated he later visited China and returned and also brought back his own boys, all of whom were landed by the Federal Courts.

Wong Wah: This witness is a cousin of the appellant and went to China with him when they were both small children. The witness at that time being only four years old, does not recall the journey, but he testified to the fact that appellant is the son of Wong Gar Yick, and from general knowledge in their village in China testified as much as he was competent to do to the fact that the appellant was born in the United States.

Hom Ngook: This witness is an aunt of the appellant, and is the second wife of Wong Tee Doy, his first wife who left Portland with appellant being deceased. This witness identified the appellant as the son of Wong Gar Yick, and like Wong Wah, testifies as far as she knows that it was the general understanding in their village in China that appellant was born in the United States.

Jong You: This witness is a Chinese friend of this family, and testifies that he knew Wong Gar Yick in Portland, and that he had a family there in the early days, and also identifies the appellant as the son of Wong Gar Yick, and to his best knowledge and belief states that appellant was born in the United States.

William P. Swope: This white witness was acquainted with the appellant's father, Wong Gar Yick, and appellant's uncle, Wong Tee Doy, at 311 Alder Street, Portland, in the early eighties, and testifies that the said Wong Gar Yick, the father of the appellant, had two small boys residing with him at his home on Alder Street in Portland; that they later went to China, but of course, he is not able to identify the appellant who is now forty years of age as one of those boys, but he testifies that Wong Gar Yick did have two small boys, born in Portland, Oregon, in the early eighties. Other witnesses have identified the appellant as one of those boys, as is hereinabove set forth.

The testimony of the appellant himself corroborates in so far as it is possible all of the testimony in his behalf submitted by the witnesses hereinabove mentioned.

It is submitted that all of this proof and testimony is to the effect that the appellant, Wong Fook Jung, was born in Portland, Oregon, about the year 1886. It must be recognized that in those days birth certificates were not a matter of record, and that it is with some difficulty that proof is offered of birth of a Chinaman in this country forty years ago, as in the instant case. More proof of the fact of appellant's birth in this country is here furnished than is usually possible in Chinese cases where birth has taken place approximately forty years ago.

As above stated, the Government introduced no witnesses against the appellant, but has depended upon certain alleged discrepancies which the immigration service felt sufficient to cause rejection in this case, just as it felt that the discrepancies in the case of Wong Tee Doy and of Wong Wah were sufficient to cause their rejection, although both of the latter were subsequently admitted to this country by the District Courts.

We now come to the deciding point in this case, and the decision must be based upon a construction of the word "leave," to be found in the testimony of Wong Tee Doy, the uncle of appellant, in 1918, when testifying on behalf of his son, Wong Nung, who was then an applicant for admission to the

United States. On that examination the Chinese inspector asked Wong Tee Doy if he had a brother, and he answered, "Yes, I had a brother (meaning Wong Gar Yick), but he has been dead a good many years." Then the Chinese inspector, instead of asking him the usual question whether or not this brother *had* a family, or ever *had* any children, this being the usual form of question, asked the witness Wong Tee Doy the following very ambiguous and isolated question:

"Q. Did he *leave* any family?

"A. No."

The immigration service in applying that question to the instant case immediately jumped to the conclusion that Wong Tee Doy in 1918 testified that his brother never had any family, and concluded from the witness's answer, that his brother did not "*leave*" any family, that he meant that he never *had* any family. Wong Nung, the applicant for admission at that time, gave the same answer to the same question. But from an examination of the entire record, and unless all of the witnesses submitted on behalf of the appellant are perjuring themselves, we must conclude that when this witness said that his brother did not "*leave*" any family he meant something else besides that which the immigration inspectors interpret that he meant. In other words, he could not

have meant that his brother did not *have* any family, because all of the testimony is to the contrary. Therefore, he must have had something else in his mind, and ex parte affidavits were introduced at the hearing on the application for a writ of habeas corpus to show what was in the witness's mind when that question was propounded to him; but the court held that such ex parte affidavits could not be considered as the record was already made up. However, these affidavits are in the record for what they are worth, as they do throw some light on what was in the witness's mind when the immigration officials asked him that ambiguous question. In the light of all the testimony that Wong Gar Yick had a family in Portland, including two boys born there, we must conclude that the witness, when he said "no" to that question meant that his brother did not "*leave*" any family in the United States when he left for China in 1888. The court recognizes the fact that whenever a Chinese is asked a question about another Chinese who has been in this country it is usually in regard to his being or staying in the United States, and when the immigration inspector asked Wong Tee Doy did his brother "*leave*" any family and he immediately answered "No," this court must conclude he meant, in the light of all the testimony to the effect that he had a family, that his brother did not

"leave" any family in the United States, but took them all with him to China. It is submitted that taken by itself the question, "Did he leave any family," is unfair and ambiguous, and if the immigration officials expect to reject an applicant for admission, whose proof of birth is complete, on the witness's answer to an isolated, ambiguous question, then this court should pass upon all the evidence in the case, which is conclusive of the American nativity of the appellant. The Chinese inspector's question should have been, not did he "leave" any family, but did he *have* a wife and children; and if that question had been propounded to him, no doubt in the light of all of the testimony here to the effect that he did have a family, including two boys born in Portland, one of whom is the appellant, he would have answered "Yes," instead of "No."

It is respectfully submitted to this court that the immigration service was apparently of the opinion that Wong Tee Doy, the uncle, and Wong Wah, the cousin of this appellant, were not admissible to the United States and accordingly they had to resort to the courts which approved of their proof of American nativity and admitted them on writs of habeas corpus. So, in the instant case the immigration service clings tenaciously to its belief that others of this family were not born in the United States and

accordingly rejected the appellant, Wong Fook Jung, who is now appealing to this court to uphold the unquestioned line of testimony in his behalf to the effect that he was born in Portland, Oregon. He is entitled to be admitted to the United States, the same as others of his family have been admitted by the Courts.

Respectfully submitted,

HUGH C. TODD,
Attorney for Appellant.